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18 DEMOCRATIC UNDERGROUND, LLC, and
19 Defendant DAVID ALLEN

20 **UNITED STATES DISTRICT COURT**
21 **FOR THE DISTRICT OF NEVADA**

18 RIGHTHAVEN LLC, a Nevada limited liability company,
19 Plaintiff,
20 v.
21 DEMOCRATIC UNDERGROUND, LLC, a District of
22 Columbia limited-liability company; and DAVID ALLEN,
23 an individual,
24 Defendants.

23 DEMOCRATIC UNDERGROUND, LLC, a District of
24 Columbia limited-liability company,
25 Counterclaimant,
26 v.
27 RIGHTHAVEN LLC, a Nevada limited liability company,
28 and STEPHENS MEDIA LLC, a Nevada limited-liability
company,
Counterdefendants.

Case No. 10-01356-RLH (GWF)

**MOTION FOR LEAVE TO
FILE DEFENDANTS'
SUPPLEMENTAL
MEMORANDUM
ADDRESSING RECENTLY
PRODUCED EVIDENCE
RELATING TO PENDING
MOTIONS AND THE
SUPPORTING
DECLARATION OF
LAURENCE PULGRAM**

MOTION FOR LEAVE

1
2 Defendant and Counterclaimant Democratic Underground, LLC and Defendant David
3 Allen (collectively, “Democratic Underground” or “Defendants”) hereby respectfully request that
4 the Court permit Defendants to file a Supplemental Memorandum Addressing Recently Produced
5 Evidence Relating to Pending Motions (“Supplemental Memorandum”) and the Supporting
6 Declaration of Laurence Pulgram (“Pulgram Decl.”), attached hereto as Exhibits 1 and 2
7 respectively. As fully explained by Defendants’ Supplemental Memorandum, this briefing is
8 necessary to address belatedly produced information highly relevant to the three currently
9 pending motions. *See* Dkt. 36 (Righthaven’s Motion to Dismiss); Dkt. 38-39 (Stephens Media’s
10 Motion to Dismiss and Joinder); and Dkt. 45 (Democratic Underground’s Cross Motion for
11 Summary Judgment).

12 Specifically, on February 28, 2011, Cross-Defendant Stephens Media, LLC (“Stephens
13 Media”) produced a copy of [REDACTED]
14 [REDACTED]. *See* Declaration of Laurence Pulgram (“Pulgram Decl.”), Exhibit A [REDACTED]
15 [REDACTED] never before revealed to any Court in this District, on its face
16 purports to [REDACTED]
17 [REDACTED] *Id.* While Righthaven has previously represented to the Court [REDACTED]
18 [REDACTED]
19 [REDACTED] it (and Stephens Media) has heretofore failed to provide [REDACTED]
20 [REDACTED].

21 [REDACTED] provide substantial evidence relevant to the pending motions,
22 including that: [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 Defendants request that the Court consider the Supplemental Memorandum and the
4 supporting Declaration of Laurence Pulgram as they address this new evidence and provide a
5 further basis upon which to deny the two Motions to Dismiss and to grant summary judgment on
6 the issue of fair use. Given that this material was only recently and belatedly produced,
7 Defendants could not have addressed it in any of the prior briefing. *See, e.g., United States v.*
8 *Maris*, 2011 WL 468554, at *5 n.5 (D. Nev. Feb. 4, 2011) (granting leave to file supplemental
9 materials even after the hearing on a motion for summary judgment); *Mitchel v. Holder*, 2010 WL
10 816761, at *1 n.1 (N.D. Cal. Mar. 9, 2010) (granting leave to file supplemental brief in support of
11 motion for summary judgment addressing newly discovered evidence); *Lumsden v. United States*,
12 2010 WL 2232946, at *1 (E.D. N.C. June 3, 2010) (granting leave to submit additional newly
13 discovered evidence in support of motion for summary judgment).

14
15 Dated: March 4, 2011

Respectfully submitted,

FENWICK & WEST LLP

17
18 By: /s/ Laurence F. Pulgram
19 LAURENCE F. PULGRAM, ESQ

20 Attorneys for Defendant and Counterclaimant
21 DEMOCRATIC UNDERGROUND, LLC, and
22 Defendant DAVID ALLEN